

**CONTRACT #4**  
**RFS # 440.00-402**

**Department of**  
**Transportation**

**VENDOR:**  
**University of Tennessee**



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

Planning Division  
SUITE 900, JAMES K. POLK BUILDING  
NASHVILLE, TENNESSEE 37243-0344  
Voice: 615-741-3421  
FAX: 615-532-8451  
Email: Jeanne.Stevens@state.tn.us  
February 11, 2005

**RECEIVED**

**MAR 11 2005**

**FISCAL REVIEW**

Honorable James W. White  
Executive Director  
Fiscal Review Committee  
8th Floor, Rachel Jackson Building  
Nashville, TN 37243  
Phone (615) 741-2564

Re: 440.00-402 Evaluation of Layer Structural Coefficients for Hot Mix Asphalt

Dear Chairman White:

The Department of Transportation is respectfully asking for approval of a non-competitive procurement process for the referenced project. The project contract is for a term of two years beginning on May 1, 2005 and ending April 30, 2007 with a possible amendment for an additional year. It will require funding in the amount of \$408,173.00, financed at 80% federal (\$326,538.00) and 20% state (\$81,635.00).

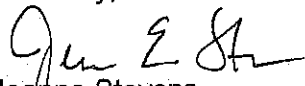
We believe a non-competitive process is in the best interest of the State because TCA 54-1-118 gives the Commissioner of Transportation the authority to enter into contract with the University of Tennessee for the following three reasons: development and testing of new materials to be used in constructing and maintaining roads, bridges and highways, the development of more economical methods of designing, constructing and maintaining roads, bridges and highways, and the training of personnel in the fundamentals of highway engineering. The herein-described project contributes to the development of more economical methods of designing, constructing and maintaining roads, bridges and highways.

In addition, UT is the only state institution that possesses state-of-the-art equipment in Hot Mix Asphalt related research. The testing equipment that will be used in this research include: the Asphalt Pavement Analyzer (APA), MTS 810 with environmental chamber and testing setup for HMA tests (indirect tensile strength, dynamic modulus and creep), Axial Torsional MTS with environmental chamber and testing setup for HMA tests, large scale direct shear box, Superpave gyratory compactor (SGC), and various HMA mix design equipments.

UT will also be providing educational opportunities for graduate and undergraduate students through this project.

Thank you for your consideration of our request.

Sincerely,

  
Jeanne Stevens  
Director

# REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS #

440.00-402

440.00-402

STATE AGENCY NAME:

TENNESSEE DEPARTMENT OF TRANSPORTATION

SERVICE CAPTION:

Evaluation of Layer Structural Coefficients for Hot Mix Asphalt (HMA)

PROPOSED CONTRACTOR:

The University of Tennessee

CONTRACT START DATE:

(If date is < 60 days after F&A receipt, attach required explanation)

04/01/2005

LATEST POSSIBLE END DATE:

(including ALL options to extend)

03/31/2008

TOTAL MAXIMUM COST:

(including ALL options to extend)

\$408,173.00

APPROVAL CRITERIA:

(select one)



use of Non-Competitive Negotiation is in the best interest of the state



only one uniquely qualified service provider able to provide the service

ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)

(1) description of service to be acquired:

Conduct research to systematically evaluate the potential increase in structural capacity of the asphalt mixture and granular base layers used in Tennessee, and if adjustments of the layer structural coefficients of these materials are warranted, determine new layer coefficients. The 2002 American Association of State Highway and Transportation Officials (AASHTO) Design Guide, calculates structural capacities of pavement directly from the fundamental mechanical properties of the paving materials (structural coefficients). Six Hot Mix Asphalt (HMA) mixtures utilizing both conventional and polymer modified asphalt, and five granular base materials will be evaluated for the new structural layer coefficients.

(2) explanation of the need for or requirement placed on the procuring agency to acquire the service:

The research will significantly benefit the economy of the state in that it will allow the utilization of the maximum potential of current paving materials used by TDOT. Currently, TDOT pavement designs are based on the AASHTO Design Guide (1993), in which each pavement layer is assigned a coefficient that reflects the contribution to the pavement capacity. The structural coefficients for hot-mix asphalt (HMA) pavement layers are based on a study done in the 1970's, and the coefficients do not reflect the benefits brought in by the technological development over the decades. According to experiences from other states, re-evaluating the current paving materials would increase the values used for the layer coefficients, resulting in more economical pavement designs.

(3) explanation of whether the service was ever bought by the procuring agency in the past, and if so, what method was used

to acquire it:

NO

(4) name and address of the proposed contractor's principal owner(s):  
(not required if proposed contractor is a state education institution)

(5) evidence that the proposed contractor has experience in providing the service and evidence of the length of time the contractor has provided service:

The University of Tennessee has historically had a strong program in hot mix asphalt (HMA) research. Over the last ten years, the UT civil and environmental engineering department has consistently provided good technical support for TDOT in HMA related areas.

Baoshan Huang

- Principal Investigator, "Numerical Simulation of Louisiana Accelerated Loading Facility (ALF)," 2004 – 2005, \$32,150.
- Principal Investigator, "Fatigue Characteristics of HMA Mixtures Containing Recycled Asphalt Pavement (RAP)," 2002 – 2004, \$193,546.
- Principal Investigator, "Evaluation of Superpave Level I Mix Design for Louisiana Implementation," 1998 – 2002, Budget: \$240,000
- Principal Investigator, "Evaluation of Field Projects Using Crumb Rubber Modified Asphalt Concrete," 2000 – 2005, Budget: \$276,260
- Co-principal Investigator, "Performance Evaluation of Louisiana's Superpave Implementation Projects Utilizing the Superpave Simple Shear Tester," 1997 – 2000, Budget: \$89,307
- Co-principal Investigator, "Evaluation of a Loaded Wheel Tester for Asphaltic Concrete Mixtures," 1997 – 2000, Budget: \$192,094
- Co-principal Investigator, "Evaluation of the Fundamental Engineering Properties of Large Stone Asphalt Mixes in Louisiana," 1997 – 2000, Budget: \$259,717

Eric C. Drumm

- Principal Investigator, with Ronald. E. Yoder, N. Randy Rainwater, N. Michael Jackson, Glenn V. Wilson, and Roger W. Meier "Incorporation of Environmental Factors in Flexible Pavement Design", April 1996 - September 2003, \$954,802.
- Principal Investigator, with Roger W. Meier, J. Wesley Hines, Vincent C. Janoo, Raymond S. Rollings, "LTPP Data Analysis: Daily and Seasonal Variations in Insitu Material Properties", (Phase I: January 2000- August 2001, \$74,920, Phase II: January 2002-August 2003, \$275,049) \$349,969.
- Investigator, with N. Michael Jackson (PI), "Analysis of Flexible Pavement Performance under Accelerated Loading at the National Center for Asphalt Technology Oval Test Track Facility, Phase I", June 1998 - August 1999. \$90,000.
- Principal Investigator, "Resilient Response of Tennessee Subgrades, Phase I: December 1990-March 1993, \$149,628, Phase II: Verification of Prediction Methods", June 1993-December 1994, \$74,993.
- Co-Principal Investigator, with A.B. Moore, "Pavement Design using Rapid Methods of Collecting and Analyzing Deflection Data, Phase II - Design Procedure Development," August 1984-July 1987, \$150,000..

(6) documentation of OIR endorsement of the Non-Competitive procurement request:  
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

(7) documentation of Department of Personnel endorsement of the Non-Competitive procurement request:  
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

(8) description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :

The University of Tennessee was selected because it meets the criteria described in T.C.A. 54-1-118, and they have done similar research as defined in previous answers.

(9) justification of why the state should acquire the service through Non-Competitive Negotiation rather than through a competitive process :  
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

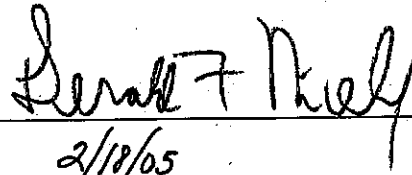
TCA 54-1-118 gives the Commissioner of Transportation the authority to enter into contract with the University of Tennessee for the following three reasons: development and testing of new materials to be used in constructing and maintaining roads, bridges and highways, the development of more economical methods of designing, constructing and maintaining roads, bridges and highways, and the training of personnel in the fundamentals of highway engineering.  
The herein-described project contributes to the development of more economical methods of designing, constructing and maintaining roads, bridges and highways.

Also UT is the only state institution that possesses state-of-the-art equipment in HMA related research. The testing equipment that will be used in this research include: the Asphalt Pavement Analyzer (APA), MTS 810 with environmental chamber and testing setup for HMA tests (indirect tensile strength, dynamic modulus and creep), Axial Torsional MTS with environmental chamber and testing setup for HMA tests, large scale direct shear box, Superpave gyratory compactor (SGC), and various HMA mix design equipments.

UT will also be providing educational opportunities for graduate and undergraduate students through this project.

**AGENCY HEAD REQUEST SIGNATURE:**

(must be signed by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)



SIGNATURE DATE:

2/18/05

011508

CONTRACT SUMMARY SHEET							
RFS Number	440.00-402			Contract Number			
State Agency	Department of Transportation			Division	Planning		
Contractor				Contractor Identification Number			
The University of Tennessee				V- X C-	C626001636-		
Service Description							
Conduct research to systematically evaluate the potential increase in structural capacity of the asphalt mixture and granular base layers used in Tennessee, and if adjustments of the layer structural coefficients of these materials are warranted, determine new layer coefficients.							
Contract Begin Date				Contract End Date			
April 1, 2005				March 31, 2008			
Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code	
440	88	134	21	on STARS			
FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including ALL amendments)		
2005	\$27,211.53	\$108,846.13			\$136,057.66		
2006	\$27,211.53	\$108,846.13			\$136,057.66		
2007	\$27,211.54	\$108,846.14			\$136,057.68		
Total	\$81,634.60	\$326,538.40			\$408,173.00		
CFDA #				Check the box ONLY if the answer is YES			
State Fiscal Contact				Is the Contractor a SUBRECIPIENT? (per OMB A-133)			
Name:	Kathie Arwood			Is the Contractor a VENDOR? (per OMB A-133)			
Address:	800 J.K. Polk Building, Nashville, TN			X			
Phone:	615-741-2498			Is the Fiscal Year Funding STRICTLY LIMITED?			
Procuring Agency Budget Officer Approval Signature				Is the Contractor on STARS?			
				X			
				Is the Contractor's FORM W-9 ATTACHED?			
				Is the Contractor's Form W-9 Filed with Accounts?			
				X			
COMPLETE FOR ALL AMENDMENTS (only)				Funding Certification			
	Base Contract & Prior Amendments	This Amendment ONLY		Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.			
END DATE →							
FY:							
FY:							
FY:							
FY:							
FY:							
Total							

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF TRANSPORTATION  
AND  
THE UNIVERSITY OF TENNESSEE**

This Contract, by and between the State of Tennessee, Department of Transportation, hereinafter referred to as the "State" and The University of Tennessee, hereinafter referred to as the "Contractor," is for the provision of conducting research to evaluate potential increases in structural capacities of hot-mix asphalt pavement, as further defined in the "SCOPE OF SERVICES."

The Contractor is a State of Tennessee institution of higher education.

**A. SCOPE OF SERVICES:**

- A.1. The contractor shall provide new layer structural coefficients for hot-mix asphalt (HMA) pavement layers that reflect the benefits brought in by technological development over the past thirty years as further defined in Attachment 1.

**B. CONTRACT TERM:**

- B.1. Contract Term. This Contract shall be effective for the period commencing on June 1, 2005 and ending on May 31, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Four Hundred Eight Thousand One Hundred Seventy Three and No/100 dollars (\$408,173.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

Service

Payment Rate Per Quarter

Quarterly report detailing work completed  
on the following tasks:

\$33,440.00

**Task 1**

Literature Review Interim Report. An interim synthesis report summarizing the state-of-art research related to the subject matter. Mix design progress.

Value of Task: \$70,000

**Task 2**

Mix design for all the HMA and granular base shall be finished and approved by TDOT.

Sample Preparation. Progress of sample preparation.

Laboratory Testing. Progress of laboratory testing of HMA and base materials.

Value of Task: \$70,000

**Task 3**

Sample Preparation. About half of the total specimens shall be prepared for lab testing. Sample volumetric properties shall be available for TDOT review.

Laboratory Testing. Additional testing.

Data Analyses. Interim data analyses.

Value of Task: \$70,000

**Task 4**

Sample Preparation. Additional sample preparation shall be finished.

Laboratory Testing. Progress of laboratory testing shall be reported in the Quarterly Report.

Data Analyses. Interim data analyses shall be available in the Quarterly Report.

Value of Task: \$70,000

**Task 5**

Laboratory Testing. Lab testing for all the materials shall be finished.

Continuing data analyses.

Value of Task: \$70,000

**Task 6**

Draft of Final Report shall be finished for TDOT review.

Value of Task: \$30,000

**Task 7**

Recommendations for Specifications. About half of the total specimens shall be prepared for lab testing. Sample volumetric properties shall be available for TDOT review.

Value of Task: \$21,280

The Contractor shall submit quarterly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.



- C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. Pursuant to **Tennessee Code Annotated**, Section 9-4-604, the State is not to issue warrants for payments to persons who are in default to the State until such arrearages are paid. If applicable to the Contractor, the Contractor agrees that, should such an arrearage exist during the term of this Contract, the State shall have the right to deduct from payments due and owing to the Contractor any and all amounts as are necessary to satisfy the arrearage.

Should a dispute arise concerning payments due and owing to the Contractor under this Contract, the State reserves the right to withhold said disputed amounts pending final resolution of the dispute.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least sixty (60) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Any liability of the Contractor to the State and third parties for any claims, losses, or costs arising out of or related to acts performed by the Contractor under this agreement shall be governed by the Tennessee Claims Commission Act, **Tennessee Code Annotated**, Section 9-8-301, *et seq.*
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, the section of this Contract pertaining to "Nondiscrimination" (section D.6.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by

Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.7. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.8. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.9. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.10. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.11. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services.
- D.12. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.13. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.14. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.15. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.16. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- E. SPECIAL TERMS AND CONDITIONS:
- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

## The State:

**THE TENNESSEE DEPARTMENT OF TRANSPORTATION**  
Attn: Nancy Sartor  
Suite 900, J.K. Polk Bldg.  
Nashville, TN 37243-0334  
Phone: (615) 741-5789 Fax: (615) 532-8451

## The Contractor:

## Technical:

**Dr. Baoshan Huang**  
223 Perkins Hall  
Department of Civil and Environmental Engineering  
The University of Tennessee  
Knoxville, TN 37996  
Phone: (865)974-7713 Fax: (865)974-2608

## Administrative:

**THE UNIVERSITY OF TENNESSEE**  
Bob Cargile  
404 Andy Holt Tower  
Knoxville, TN 37996-4134  
Phone: (865) 974-3825 Fax: (865) 974-1838

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

**E.3. Reports.** During the course of performances provided for herein, the Contractor agrees to submit reports to the state as follows:

a. The Contractor shall maintain contact via phone a minimum of monthly and meet periodically with the State monitoring team during the progress of this project to present findings and to advise the team of complications and/or general progress.

b. The Contractor shall submit to the State written progress reports at least quarterly giving the progress, status, the next quarter's work plan and listing expenditures for the past quarter.

c. The Contractor shall submit to the State an electronic copy of the draft final report in Microsoft Word format and five (5) copies of a draft final report upon completion of the project within a minimum of ten (10) working days for review by the State prior to termination of this project.

d. Upon completion of the final report, the Contractor shall incorporate changes and corrections as appropriate and submit an electronic copy in Microsoft Word format, Adobe PDG format, and ten (10) bound copies of the final report, including a camera ready copy with all, if any, developed computer software.

**E.4. Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon

receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.

- E.5. Patents and Copyright. The Contractor may patent and/or copyright any qualifying items or materials developed under this project. However, the State and the Federal Government shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use for Government purposes any items or materials patented and/or copyrighted.
- E.6. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of ***Tennessee Code Annotated***, Section 12-7-101, et. sec., shall be printed unless a printing authorization number has been obtained and affixed as required by ***Tennessee Code Annotated***, Section 12-7-103 (d).
- E.7. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, and/or services. Such procurements shall be made on a competitive basis, where practical.
- E.8. Equipment Acquisition. This Contract does not involve the acquisition and disposition of equipment acquired with funds provided under this Grant.
- E.9. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.10. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.11. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.
- E.12. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor shall include the

statement, "The following project is funded under an agreement with The Tennessee Department of Transportation."

- E.13. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.14. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

- E.15. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principles:
- are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
  - have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
  - have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

- E.16. Equal Employment Opportunity. The applicable provisions of 49 CFR §18.36(i) are incorporated herein by reference and include the following:

Grantee shall comply with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor regulations 41 CFR 60; applicable requirements of the Clean Air Act, and Clean Water Act.

IN WITNESS WHEREOF:

[CONTRACTOR LEGAL ENTITY NAME]:

\_\_\_\_\_  
[NAME AND TITLE]

\_\_\_\_\_  
Date

[STATE AGENCY NAME]:

\_\_\_\_\_  
[NAME AND TITLE]

\_\_\_\_\_  
Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

\_\_\_\_\_  
M. D. Goetz, Jr., Commissioner

\_\_\_\_\_  
Date

COMPTROLLER OF THE TREASURY:

\_\_\_\_\_  
John G. Morgan, Comptroller of the Treasury

\_\_\_\_\_  
Date